

10

UNITED STATE DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

COMFORT DENTAL CENTERS, P.C.,
A Michigan professional service corporation,
Plaintiff,

Case: 2:09-cv-13112
Judge: Tarnow, Arthur J
MJ: Morgan, Virginia M
Filed: 08-07-2009 At 10:27 AM
CMP COMFORT DENTAL CENTERS V. COMFO
RT DENTAL GRP (DA)

vs.

COMFORT DENTAL GROUP, PLLC
d/b/a COMFORT DENTAL SPA,
a Michigan professional limited liability company,
Defendant.

TRACEY L. LEE (P52444)
Attorney for Plaintiff
P.O. Box 252951
West Bloomfield, MI 48325
(248) 535-2095

COMPLAINT AND JURY DEMAND

I. THE PARTIES AND JURISDICTION

1. Plaintiff, Comfort Dental Centers, P.C., Southfield Michigan, (hereinafter "CDC"), is a Michigan professional service corporation having its principal place of business in Oakland County, Michigan.

2. Upon information and belief, defendant, Comfort Dental Group PLLC is a Michigan limited liability company with its principal place of business in Oakland County, Michigan.

3. The Court has subject matter jurisdiction over the claims herein pursuant to 15 U.S.C. § 1121, 28 U.S.C. § 1331, and 28 U.S.C. § 1338(a) in that this case arises under the Trademark Laws of the United States. The Court has personal jurisdiction over the defendant

3
7/28/08

because the defendant is conducting business and has committed the acts complained of in the State of Michigan and in this district.

II. FACTUAL BACKGROUND

A. CDC And Its Asserted Trademark Rights

4. CDC is a general dentistry practice which includes orthodontics, cosmetic, TMJ, sedation, oral surgery, gum care and additional dentistry services.

5. Since at least February of 1994, CDC has been continuously providing its services under the trade name "Comfort Dental Centers" in Oakland County.

6. Plaintiff has extensively and continuously sold, marketed, advertised and promoted its services using the above described trade name and trade dress (collectively "the marks"), and the same have been widely and favorably known throughout Oakland County, Michigan. The marks symbolize business goodwill of CDC and are an intangible asset of substantial commercial value.

7. Since 1994, long prior to the acts of the defendant herein alleged, CDC has used the marks alone or in combination, or in connection with its CDC services, including in connection with the promotion, marketing, and advertising of CDC services throughout the Metro-Detroit area and this district.

8. Since 1994, CDC incorporated its practice and began mass mailing to its customers and prospective customers using the words "Comfort Dental" and "Comfort Dental Centers" to promote and describe its new practice Oakland County.

9. Service fees, advertising and promotion of the services provided under the marks since 1994 has amounted to many hundreds of thousands of dollars.

10. Defendants Comfort Dental Group has only had a legal existence since 2004.

B. Defendant's Activities

11. Subsequent to CDC's use of the marks, and upon information and belief, with actual knowledge of CDC's use of the marks, and with the intention to misrepresent the source of defendant's services, defendant copied, adopted and is using the marks in connection with the advertising, offering for sale and sale of dental services in the Metro-Detroit area, more specifically within Oakland County. The defendant's advertising and letterhead is set forth below next to the marks of plaintiff.

12. Upon information and belief, defendant used the marks of CDC to unfairly mislead the patients of CDC into thinking the offices were owned and operated by the same dentist at other locations. Without such actions intended to confuse others into thinking that the defendant was associated with CDC, Defendant might not have been able to provide services for patients of CDC. CDC received numerous calls inquiring if patients if they can choose between the Farmington and Southfield locations, since defendant did not inform the patients of CDC that the locations were not under CDC.

13. Defendants continued misappropriation and attempt to misappropriate plaintiff's trade name and trade dress by confusing the patients is an attempt to further trade on plaintiff's good name, reputation and longevity in the Metro-Detroit area, and to unfairly compete with plaintiff.

14. Defendant has no consent, license, approval or other authorization to use plaintiff's marks in connection with its services.

**COUNT I –
VIOLATION OF 15 U.S.C. § 1125(a) FEDERAL UNFAIR COMPETITION**

15. The allegations of paragraph 1-14 are incorporated herein by reference.

16. Defendant's use of the marks alleged above is likely to confuse, mislead, or deceive customers, purchasers, and members of the general public as to the origin, source, sponsorship, or affiliation of defendant's services, and is likely to cause such people to believe in error that the defendant's services have been authorized, sponsored, approved, endorsed, or licensed by Comfort Dental Centers, P.C. or that defendant is in some way affiliated with Comfort Dental Centers, P.C..

17. These actions constitute trademark, service mark, trade name or trade dress infringement under 15 U.S.C. § 1125(a). Additionally, defendant's use of the marks in a similarly confusing manner as Plaintiff's and intentionally not correcting the error constitutes unfair competition within the meaning of 15 U.S.C. § 1125(a).

**COUNT II
COMMON LAW, TRADEMARK INFRINGEMENT
AND UNFAIR COMPETITION**

18. The allegations of paragraphs 1-17 are incorporated herein by reference.

19. Plaintiff was the first to use the marks or any marks similar thereto in association with its services. As a result of the continued use by Comfort Dental Centers, P.C., of services with the marks since approximately 1994, the marks have become widely known and Comfort Dental Centers, P.C. has become identified in the public mind as the source of services to which the marks are applied.

20. The defendant, through the acts described above, which are calculated to increase defendant's business and profits by confusing members of the public and allowing defendant to knowingly open a competing business, while at the same time damaging plaintiff's reputation, misappropriated the valuable goodwill of plaintiff's marks, infringed upon plaintiff's rights, and unfairly competes with Plaintiff under the common law trademark and unfair competition laws of Michigan.

7/28/09
3

DEMAND FOR RELIEF

WHEREFORE, Plaintiff demands entry of a judgment granting relief against the defendant as follows:

A. A determination that the defendant has violated 15 U.S.C. § 1125(a), that Plaintiff has been damaged by such violations, and that the defendant is liable to Plaintiff for such violations;

B. A determination that the defendant has committed common law trademark infringement, that Plaintiff has been damaged by such infringement, and that defendant is liable to Plaintiff for common law trademark infringement and unfair competition;

C. A determination that this case is "exceptional," in the sense of 15 U.S.C. § 1117(a);

D. Under all claims for relief, that injunction be temporarily, preliminarily and permanently issued enjoining defendant, its employees, agents, successors and assigns, and all those in active concert and participation with it, and each of them who receives notice directly or otherwise of such injunction, from:

1. imitating, copying or making any unauthorized use of the marks;
2. importing, manufacturing, producing, distributing, circulating, selling, offering for sale, advertising, promoting or displaying any service or product using simulation, reproduction, counterfeit, copy or colorable imitation of the marks;
3. Using any false designation of origin or false description (including, without limitation, any letters, symbols or designs constituting the marks) or performing any act, which can, or is likely to, lead members of the trade

7/28/09
3

or public to believe that any service provided by defendant is in any manner associated or connected with Comfort Dental Centers, P.C. or sold, manufactured, licensed, sponsored, approved or authorized by Comfort Dental Centers, P.C.;

E. For an Order directing the defendant deliver for destruction all products, labels, tags, signs, prints, packages, videos and advertisements in their possession or under their control bearing or using the marks or any simulation, reproduction, counterfeit, copy or colorable imitation thereof;

F. For an Order directing all such relief as the Court may deem appropriate to prevent the trade and public from deriving the erroneous impression that any service offered or promoted by defendant is authorized by Comfort Dental Centers, P.C. or related in any way to Comfort Dental Centers, P.C. or its services;

H. For an Order of Comfort Dental Centers, P.C.'s costs and disbursements incurred in this action, including Comfort Dental Centers, P.C.'s reasonable attorney fees;

I. For an award of Comfort Dental Centers, P.C.'s damages trebled or, alternatively, an award of defendant's wrongful profits trebled, whichever is greater, plus Comfort Dental Centers, P.C.'s costs and attorney fees pursuant to 15 U.S.C. § 1117;

J. For an award of Comfort Dental Centers, P.C.'s damages arising from defendant's acts;

K. An award of interest, including prejudgment interest on the foregoing sums;

L. For such other and further relief as the Court may deem just and appropriate.


DEMAND FOR JURY

Plaintiff, CDC, demands a trial by jury for all issues so triable.

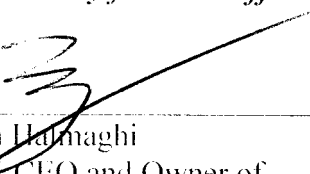
Respectfully submitted,


TRACEY LEE

Dated: 8/4/09

By: 
TRACEY LEE (P52444)
P.O. Box 252951
West Bloomfield, MI 48325
Tel: (248) 535-2095
Fax: (248) 355-1027
Attorney for Plaintiff

Dated: 7/28/09

By: 
Dr. John Halmaghi
Plaintiff, CEO and Owner of
Comfort Dental Centers, P.C.

7/28/09


JS 44 (Rev. 12/07)

CIVIL COVER SHEET County in which action arose Oakland

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFSComfort Dental Centers, P.C.(b) County of Residence of First Listed Plaintiff Oakland
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Tracey Lee Esq.
P.O. Box 252451
W. Bloomfield, MI 48325-2451

DEFENDANTSComfort Dental Group, PLLCCounty of Residence of First Listed Defendant Oakland
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVEDCase: 2:09-cv-13112Judge: Tarnow, Arthur JMJ: Morgan, Virginia MFiled: 08-07-2009 At 10:27 AMCMP COMFORT DENTAL CENTERS V. COMFO intiff
RT DENTAL GRP (DA)**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP

- Citizen of this State ☐ 1 ☐ 1 Incorporated or Principal Place of Business In This State ☐ 4 ☐ 4
- Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business In Another State ☐ 5 ☐ 5
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Trademark Law of the U.S.

Brief description of cause:

Trademark infringement, and unfair competition**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

7 AUG 09T Lee

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

☐ Yes

☒ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

☐ Yes

☒ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

Notes :
